

CALIFORNIA BOARD OF OCCUPATIONAL THERAPY
PROPOSED AMENDED REGULATORY LANGUAGE
Title 16, Division 39, California Code of Regulations

Proposed amendments are shown by strikeout for deleted text and underline for new text.

Article 5. Citations

§ 4141. Assessment of Administrative Fines

- (a) Where citations include an assessment of an administrative fine, the fine shall be not less than \$50 or exceed ~~\$2,000~~ \$5,000 for each violation. Each violation shall be classified according to the nature of the violation and shall indicate the classification on the face thereof as follows:
- (1) Class "A" violations shall not be less than \$1,001 nor more than ~~\$2,000~~ \$5,000. Class "A" violations are violations which the executive officer, or his or her designee, has determined involve a person who, while engaged in the practice of occupational therapy, has violated a statute or regulation relating to the Occupational Therapy Practice Act. Class "A" violations are more serious in nature and may include, but are not limited to, violations which resulted in or had significant potential for patient harm and where there is no evidence that revocation or other disciplinary action is required to ensure public safety. Such violations include, but are not limited to, failing to provide direct in-sight supervision of an aide when the aide performed a client related task that resulted in harm to the patient, or failing to provide adequate supervision to an occupational therapy assistant that resulted in harm to the patient, fraudulent medical billing, practicing without a current and active license for more than one year, or functioning autonomously as an occupational therapy assistant. A Class "A" violation may be issued to a person who has committed a class "B" violation who has had two or more prior, separate class "B" violations.
- (2) Class "B" violations shall not be less \$501 nor more than ~~\$1,000~~ \$2,500. Class "B" violations are violations which the executive officer, or his or her designee, has determined involve either a person who, while engaged in the practice of occupational therapy, has violated a statute or regulation relating to the practice of Occupational Therapy Practice Act. Class "B" violations are less serious in nature and may include, but are not limited to, violations which could have resulted in patient harm. Typically some degree of mitigation will exist. Such violations include, but are not limited to, failing to provide direct in-sight supervision of an aide when the aide performed a client related task that did not result in harm to a patient, ~~or fraudulent medical billing,~~ failure to provide adequate supervision to an occupational therapy assistant, limited permit holder, student, or occupational therapy aid, resulting in no patient harm, providing advanced practice services without board approval, practicing without a current and active license for 91 to 365 days, or supervising more occupational therapy assistants than allowed by law. A class "B" violation may be issued to a person who has committed a class "C" violation who has two or more prior, separate class "C" violations.

- (3) Class "C" violations shall not be less than \$50 nor more than ~~\$500~~ \$1,000. Class "C" violations are violations which the executive officer, or his or her designee, has determined involve a person who has violated a statute or regulation relating to the practice of occupational therapy. A class "C" violation is a minor or technical violation which is neither directly or potentially detrimental to patients nor potentially impacts their care. Such violations may include, but are not limited to, practicing without a current and active license for 90 days or less, and failing to disclose a conviction or convictions in the application process, ~~and failing to notify the Board of any changes in the licensee's or certificate holder's address of record.~~ A class "C" violation may also be issued to a licensee or certificate holder who fails to respond to a written request by the board for additional information relating to a renewal application.
- (4) Class "D" violations shall not be less than \$50 nor more than \$250. Class "D" violations are violations which the executive officer, or his or her designee, has determined that an applicant, licensee, or certificate holder has failed to provide a change of address within 30 days as required by Section 4102. A class "D" violation is a minor or technical violation which is neither directly or potentially detrimental to patients nor potentially impacts their care.
- (b) In determining the amount of an administrative fine, the executive officer, or his or her designee, shall consider the following factors:
- (1) Gravity of the violation,
 - (2) History of previous violations of the same or similar conduct,
 - (3) Length of time that has passed since the date of the violation,
 - (4) Consequences of the violation, including potential for patient harm,
 - (5) The good or bad faith exhibited by the cited individual,
 - (6) Evidence that the violation was willful,
 - (7) The extent to which the individual cooperated with the board's investigation,
 - (8) The extent to which the individual has remediated any knowledge and/or skills deficiencies,
 - (9) Any other mitigating or aggravating factors.

Note: Authority cited: Sections 125.9, 148 and 2570.20, Business and Professions Code.
Reference: Sections 125.9 and 148 Business and Professions Code.